

# SENATE BILL 935

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CF HB 1149

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By: **Senators Zirkin and Stone**

Introduced and read first time: February 17, 2010

Assigned to: Rules

Re-referred to: Judicial Proceedings, February 26, 2010

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: April 6, 2010

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Denial or Dismissal of Domestic Violence Peace Order or Protective Order**  
3 **Petition – ~~Expungement~~ Shielding of Records**

4 FOR the purpose of authorizing a respondent in a certain ~~domestic violence~~ peace  
5 order or protective order proceeding to file a written request to ~~expunge~~ shield  
6 court records relating to the proceeding under certain circumstances; providing  
7 that a certain request for ~~expungement~~ shielding may not be filed within a  
8 certain time except under certain circumstances; requiring the court to schedule  
9 a hearing on a certain request; requiring the court to provide a certain notice of  
10 a certain hearing; requiring the court to order the ~~expungement~~ shielding of all  
11 court records relating to the proceeding under certain circumstances; providing  
12 a certain exception; requiring certain custodians to notify the court and the  
13 respondent of compliance with the order; authorizing access by certain persons  
14 to certain ~~expunged~~ shielded records under certain circumstances; requiring the  
15 court to review certain court records before granting, denying, or modifying a  
16 final protective order; establishing that the failure to review certain records  
17 does not affect the validity of a final protective order; defining certain terms;  
18 and generally relating to ~~domestic violence and the expungement~~ the shielding  
19 and review of certain court records.

20 BY adding to

21 Article – Courts and Judicial Proceedings  
22 Section 3-1510  
23 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (2006 Replacement Volume and 2009 Supplement)

2 BY renumbering

3 Article – Family Law

4 Section 4–506(e) through (j), respectively

5 to be Section 4–506(f) through (k), respectively

6 Annotated Code of Maryland

7 (2006 Replacement Volume and 2009 Supplement)

8 BY adding to

9 Article – Family Law

10 Section 4–506(e) and 4–512

11 Annotated Code of Maryland

12 (2006 Replacement Volume and 2009 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
14 MARYLAND, That Section(s) 4–506(e) through (j), respectively, of Article – Family  
15 Law of the Annotated Code of Maryland be renumbered to be Section(s) 4–506(f)  
16 through (k), respectively.

17 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
18 read as follows:

19 **Article – Courts and Judicial Proceedings**

20 **3–1510.**

21 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**  
22 **MEANINGS INDICATED.**

23 **(2) (I) “COURT RECORD” MEANS AN OFFICIAL RECORD OF A**  
24 **COURT ABOUT A PROCEEDING THAT THE CLERK OF A COURT OR OTHER COURT**  
25 **PERSONNEL KEEPS.**

26 **(II) “COURT RECORD” INCLUDES:**

27 **1. AN INDEX, A DOCKET ENTRY, A PETITION, A**  
28 **MEMORANDUM, A TRANSCRIPTION OF PROCEEDINGS, AN ELECTRONIC**  
29 **RECORDING, AN ORDER, AND A JUDGMENT; AND**

30 **2. ANY ELECTRONIC INFORMATION ABOUT A**  
31 **PROCEEDING ON THE WEBSITE MAINTAINED BY THE MARYLAND JUDICIARY.**

32 **(3) “SHIELD” MEANS TO REMOVE INFORMATION FROM PUBLIC**  
33 **INSPECTION IN ACCORDANCE WITH THIS SECTION.**

1           **(4) "SHIELDING" MEANS:**

2                   **(I) WITH RESPECT TO A RECORD KEPT IN A COURTHOUSE,**  
3 **REMOVING TO A SEPARATE SECURE AREA TO WHICH PERSONS WHO DO NOT**  
4 **HAVE A LEGITIMATE REASON FOR ACCESS ARE DENIED ACCESS; AND**

5                   **(II) WITH RESPECT TO ELECTRONIC INFORMATION ABOUT A**  
6 **PROCEEDING ON THE WEBSITE MAINTAINED BY THE MARYLAND JUDICIARY,**  
7 **REMOVING THE INFORMATION FROM THE PUBLIC WEBSITE.**

8           **(5) "VICTIM SERVICES PROVIDER" MEANS A NONPROFIT**  
9 **ORGANIZATION THAT HAS BEEN AUTHORIZED BY THE GOVERNOR'S OFFICE OF**  
10 **CRIME CONTROL AND PREVENTION OR THE DEPARTMENT OF HUMAN**  
11 **SERVICES TO HAVE ACCESS TO RECORDS OF SHIELDED PEACE ORDERS IN**  
12 **ORDER TO ASSIST VICTIMS OF ABUSE.**

13           **(B) IF A PETITION FILED UNDER THIS SUBTITLE IS DENIED OR**  
14 **DISMISSED AT THE INTERIM, TEMPORARY, OR FINAL PEACE ORDER STAGE OF A**  
15 **PROCEEDING UNDER THIS SUBTITLE, THE RESPONDENT MAY FILE A WRITTEN**  
16 **REQUEST TO SHIELD ALL COURT RECORDS RELATING TO THE PROCEEDING.**

17           **(C) A REQUEST FOR SHIELDING UNDER THIS SECTION MAY NOT BE**  
18 **FILED WITHIN 3 YEARS AFTER THE DENIAL OR DISMISSAL OF THE PETITION**  
19 **UNLESS THE RESPONDENT FILES WITH THE REQUEST A GENERAL WAIVER AND**  
20 **RELEASE OF ALL THE RESPONDENT'S TORT CLAIMS RELATED TO THE**  
21 **PROCEEDING UNDER THIS SUBTITLE.**

22           **(D) (1) ON THE FILING OF A REQUEST FOR SHIELDING UNDER THIS**  
23 **SECTION, THE COURT SHALL SCHEDULE A HEARING ON THE REQUEST.**

24                   **(2) THE COURT SHALL GIVE NOTICE OF THE HEARING TO THE**  
25 **PETITIONER OR THE PETITIONER'S COUNSEL OF RECORD.**

26                   **(3) EXCEPT AS PROVIDED IN PARAGRAPHS (4) AND (5) OF THIS**  
27 **SUBSECTION, AFTER THE HEARING, THE COURT SHALL ORDER THE SHIELDING**  
28 **OF ALL COURT RECORDS RELATING TO THE PROCEEDING IF THE COURT FINDS:**

29                   **(I) THAT THE PETITION WAS DENIED OR DISMISSED AT THE**  
30 **INTERIM, TEMPORARY, OR FINAL PEACE ORDER STAGE OF THE PROCEEDING;**

31                   **(II) THAT A FINAL PEACE ORDER OR PROTECTIVE ORDER**  
32 **HAS NOT BEEN PREVIOUSLY ISSUED IN A PROCEEDING BETWEEN THE**  
33 **PETITIONER AND THE RESPONDENT; AND**

1                    (III) THAT NONE OF THE FOLLOWING ARE PENDING AT THE  
2 TIME OF THE HEARING:

3                    1. AN INTERIM OR TEMPORARY PEACE ORDER OR  
4 PROTECTIVE ORDER ISSUED IN A PROCEEDING BETWEEN THE PETITIONER AND  
5 THE RESPONDENT; OR

6                    2. A CRIMINAL CHARGE AGAINST THE RESPONDENT  
7 ARISING FROM AN ALLEGED ACT DESCRIBED IN § 3-1503(A) OF THIS ARTICLE  
8 AGAINST THE PETITIONER.

9                    (4) (I) IF THE PETITIONER APPEARS AT THE SHIELDING  
10 HEARING AND OBJECTS TO THE SHIELDING, THE COURT MAY, FOR GOOD CAUSE,  
11 DENY THE SHIELDING.

12                    (II) IN DETERMINING WHETHER THERE IS GOOD CAUSE TO  
13 GRANT THE REQUEST TO SHIELD COURT RECORDS, THE COURT SHALL BALANCE  
14 THE PRIVACY OF THE RESPONDENT AND POTENTIAL DANGER OF ADVERSE  
15 CONSEQUENCES TO THE RESPONDENT AGAINST THE POTENTIAL RISK OF  
16 FUTURE HARM AND DANGER TO THE PETITIONER AND THE COMMUNITY.

17                    (5) INFORMATION ABOUT THE PROCEEDING MAY NOT BE  
18 REMOVED FROM THE DOMESTIC VIOLENCE CENTRAL REPOSITORY.

19                    (E) (1) THIS SECTION DOES NOT PRECLUDE THE FOLLOWING  
20 PERSONS FROM ACCESSING A SHIELDED RECORD FOR A LEGITIMATE REASON:

21                    (I) A LAW ENFORCEMENT OFFICER;

22                    (II) AN ATTORNEY WHO REPRESENTS OR HAS  
23 REPRESENTED THE PETITIONER OR THE RESPONDENT IN A PROCEEDING;

24                    (III) A STATE'S ATTORNEY;

25                    (IV) AN EMPLOYEE OF A LOCAL DEPARTMENT OF SOCIAL  
26 SERVICES; OR

27                    (V) A VICTIM SERVICES PROVIDER.

28                    (2) (I) A PERSON NOT LISTED IN PARAGRAPH (1) OF THIS  
29 SUBSECTION MAY SUBPOENA, OR FILE A MOTION FOR ACCESS TO, A RECORD  
30 SHIELDED UNDER THIS SECTION.

31                    (II) IF THE COURT FINDS THAT THE PERSON HAS A  
32 LEGITIMATE REASON FOR ACCESS, THE COURT MAY GRANT THE PERSON

1 ACCESS TO THE SHIELDED RECORD UNDER THE TERMS AND CONDITIONS THAT  
2 THE COURT DETERMINES.

3 (III) IN RULING ON A MOTION UNDER THIS PARAGRAPH, THE  
4 COURT SHALL BALANCE THE PERSON'S NEED FOR ACCESS TO THE RECORD  
5 WITH THE RESPONDENT'S RIGHT TO PRIVACY AND THE POTENTIAL HARM OF  
6 UNWARRANTED ADVERSE CONSEQUENCES TO THE RESPONDENT THAT THE  
7 DISCLOSURE MAY CREATE.

8 (F) WITHIN 60 DAYS AFTER ENTRY OF AN ORDER UNDER SUBSECTION  
9 (D)(3) OF THIS SECTION, EACH CUSTODIAN OF COURT RECORDS THAT ARE  
10 SUBJECT TO THE ORDER OF SHIELDING SHALL ADVISE IN WRITING THE COURT  
11 AND THE RESPONDENT OF COMPLIANCE WITH THE ORDER.

12 Article – Family Law

13 4-506.

14 (E) (1) BEFORE GRANTING, DENYING, OR MODIFYING A FINAL  
15 PROTECTIVE ORDER UNDER THIS SECTION, THE COURT SHALL REVIEW ALL  
16 OPEN AND SHIELDED COURT RECORDS INVOLVING THE PERSON ELIGIBLE FOR  
17 RELIEF AND THE RESPONDENT, INCLUDING RECORDS OF PROCEEDINGS UNDER:

18 (I) THE CRIMINAL LAW ARTICLE;

19 (II) TITLE 3, SUBTITLE 15 OF THE COURTS ARTICLE; AND

20 (III) THIS ARTICLE.

21 (2) THE COURT'S FAILURE TO REVIEW RECORDS UNDER THIS  
22 SUBSECTION DOES NOT AFFECT THE VALIDITY OF AN ORDER ISSUED UNDER  
23 THIS SECTION.

24 4-512.

25 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE  
26 MEANINGS INDICATED.

27 (2) (I) "COURT RECORD" MEANS AN OFFICIAL RECORD OF A  
28 COURT ABOUT A PROCEEDING THAT THE CLERK OF A COURT OR OTHER COURT  
29 PERSONNEL KEEPS.

30 (II) "COURT RECORD" INCLUDES:

1                   1.    AN INDEX, A DOCKET ENTRY, A PETITION, A  
2 MEMORANDUM, A TRANSCRIPTION OF PROCEEDINGS, AN ELECTRONIC  
3 RECORDING, AN ORDER, AND A JUDGMENT; AND

4                   2.    ANY ELECTRONIC INFORMATION ABOUT A  
5 PROCEEDING ON THE WEBSITE MAINTAINED BY THE MARYLAND JUDICIARY.

6                   (3)    “~~EXPUNGE~~ SHIELD” MEANS TO REMOVE INFORMATION FROM  
7 PUBLIC INSPECTION IN ACCORDANCE WITH THIS SECTION.

8                   (4)    “~~EXPUNGEMENT~~ SHIELDING” MEANS:

9                    (I)    WITH RESPECT TO A RECORD KEPT IN A COURTHOUSE,  
10 ~~REMOVAL~~ REMOVING TO A SEPARATE SECURE AREA TO WHICH PERSONS WHO  
11 DO NOT HAVE A LEGITIMATE REASON FOR ACCESS ARE DENIED ACCESS; AND

12                    (II)   WITH RESPECT TO ELECTRONIC INFORMATION ABOUT A  
13 PROCEEDING ON THE WEBSITE MAINTAINED BY THE MARYLAND JUDICIARY,  
14 ~~REMOVAL OF~~ REMOVING THE INFORMATION FROM THE PUBLIC WEBSITE.

15                   (5)    “VICTIM SERVICES PROVIDER” MEANS A NONPROFIT  
16 ORGANIZATION THAT HAS BEEN AUTHORIZED BY THE GOVERNOR’S OFFICE OF  
17 CRIME CONTROL AND PREVENTION OR THE DEPARTMENT OF HUMAN  
18 SERVICES TO HAVE ACCESS TO RECORDS OF SHIELDED PROTECTIVE ORDERS IN  
19 ORDER TO ASSIST VICTIMS OF ABUSE.

20                   (B)    IF A PETITION FILED UNDER THIS SUBTITLE IS DENIED OR  
21 DISMISSED AT THE INTERIM, TEMPORARY, OR FINAL PROTECTIVE ORDER STAGE  
22 OF A PROCEEDING UNDER THIS SUBTITLE, THE RESPONDENT MAY FILE A  
23 WRITTEN REQUEST TO ~~EXPUNGE~~ SHIELD ALL COURT RECORDS RELATING TO  
24 THE PROCEEDING.

25                   (C)    A REQUEST FOR ~~EXPUNGEMENT~~ SHIELDING UNDER THIS SECTION  
26 MAY NOT BE FILED WITHIN 3 YEARS AFTER THE DENIAL OR DISMISSAL OF THE  
27 PETITION, UNLESS THE RESPONDENT FILES WITH THE REQUEST A GENERAL  
28 WAIVER AND RELEASE OF ALL THE RESPONDENT’S TORT CLAIMS RELATED TO  
29 THE PROCEEDING UNDER THIS SUBTITLE.

30                   (D)    (1)    ON THE FILING OF A REQUEST FOR ~~EXPUNGEMENT~~  
31 SHIELDING UNDER THIS SECTION, THE COURT SHALL SCHEDULE A HEARING ON  
32 THE REQUEST.

33                   (2)    THE COURT SHALL GIVE NOTICE OF THE HEARING TO THE  
34 PETITIONER OR THE PETITIONER’S COUNSEL OF RECORD.

1           (3) EXCEPT AS PROVIDED IN PARAGRAPHS (4) AND (5) OF THIS  
2 SUBSECTION, AFTER THE HEARING, THE COURT SHALL ORDER THE  
3 ~~EXPUNGEMENT SHIELDING~~ OF ALL COURT RECORDS RELATING TO THE  
4 PROCEEDING IF THE COURT FINDS:

5           (I) THAT THE PETITION WAS DENIED OR DISMISSED AT THE  
6 INTERIM, TEMPORARY, OR FINAL PROTECTIVE ORDER STAGE OF THE  
7 PROCEEDING; ~~AND~~

8           (II) THAT A FINAL PROTECTIVE ORDER OR PEACE ORDER  
9 HAS NOT BEEN PREVIOUSLY ISSUED ~~AGAINST THE RESPONDENT IN A~~  
10 PROCEEDING BETWEEN THE PETITIONER AND THE RESPONDENT ~~AND THAT~~  
11 ~~THERE IS NO INTERIM OR TEMPORARY PROTECTIVE ORDER PENDING AGAINST~~  
12 ~~THE RESPONDENT AT THE TIME OF THE HEARING; AND~~

13           (III) THAT NONE OF THE FOLLOWING ARE PENDING AT THE  
14 TIME OF THE HEARING:

15                   1. AN INTERIM OR TEMPORARY PROTECTIVE ORDER  
16 OR PEACE ORDER ISSUED IN A PROCEEDING BETWEEN THE PETITIONER AND  
17 THE RESPONDENT; OR

18                   2. A CRIMINAL CHARGE AGAINST THE RESPONDENT  
19 ARISING FROM ALLEGED ABUSE AGAINST THE PETITIONER.

20           (4) (I) IF THE PETITIONER APPEARS AT THE ~~EXPUNGEMENT~~  
21 SHIELDING HEARING AND OBJECTS TO THE ~~EXPUNGEMENT~~ SHIELDING, THE  
22 COURT MAY, FOR GOOD CAUSE, DENY THE ~~EXPUNGEMENT~~ SHIELDING.

23           ~~(II) THE COURT MAY NOT DENY AN EXPUNGEMENT IF THE~~  
24 ~~COURT FINDS THAT THE PRIVACY OF THE RESPONDENT OR THE DANGER OF~~  
25 ~~ADVERSE CONSEQUENCES TO THE RESPONDENT OUTWEIGH THE PUBLIC~~  
26 ~~INTEREST IN HAVING THE RECORD REMAIN PUBLIC.~~

27           (II) IN DETERMINING WHETHER THERE IS GOOD CAUSE TO  
28 GRANT THE REQUEST TO SHIELD COURT RECORDS, THE COURT SHALL BALANCE  
29 THE PRIVACY OF THE RESPONDENT AND POTENTIAL DANGER OF ADVERSE  
30 CONSEQUENCES TO THE RESPONDENT AGAINST THE POTENTIAL RISK OF  
31 FUTURE HARM AND DANGER TO THE PETITIONER AND THE COMMUNITY.

32           (5) INFORMATION ABOUT THE PROCEEDING MAY NOT BE  
33 REMOVED FROM THE DOMESTIC VIOLENCE CENTRAL REPOSITORY.

34           (E) (1) THIS SECTION DOES NOT PRECLUDE ~~A LAW ENFORCEMENT~~  
35 ~~OFFICER, AN OFFICER OF THE COURT, OR A STATE'S ATTORNEY WITH A~~

1 ~~LEGITIMATE PURPOSE FROM HAVING ACCESS TO AN EXPUNGED RECORD~~ THE  
 2 FOLLOWING PERSONS FROM ACCESSING A SHIELDED RECORD FOR A  
 3 LEGITIMATE REASON:

4 (I) A LAW ENFORCEMENT OFFICER;

5 (II) AN ATTORNEY WHO REPRESENTS OR HAS REPRESENTED  
 6 THE PETITIONER OR THE RESPONDENT IN A PROCEEDING;

7 (III) A STATE'S ATTORNEY;

8 (IV) AN EMPLOYEE OF A LOCAL DEPARTMENT; OR

9 (V) A VICTIM SERVICES PROVIDER.

10 (2) (I) A PERSON NOT LISTED IN PARAGRAPH (1) OF THIS  
 11 SUBSECTION MAY SUBPOENA, OR FILE A MOTION FOR ACCESS TO, A RECORD  
 12 ~~EXPUNGED~~ SHIELDED UNDER THIS SECTION.

13 (II) IF THE COURT FINDS THAT THE PERSON HAS A  
 14 LEGITIMATE REASON FOR ACCESS, THE COURT MAY GRANT THE PERSON  
 15 ACCESS TO THE ~~EXPUNGED~~ SHIELDED RECORD UNDER THE TERMS AND  
 16 CONDITIONS THAT THE COURT DETERMINES.

17 (III) IN RULING ON A MOTION UNDER THIS PARAGRAPH, THE  
 18 COURT SHALL BALANCE THE PERSON'S NEED FOR ACCESS TO THE RECORD  
 19 WITH THE RESPONDENT'S RIGHT TO PRIVACY AND THE POTENTIAL HARM ~~AND~~  
 20 ~~DANGER~~ OF UNWARRANTED ADVERSE CONSEQUENCES TO THE RESPONDENT  
 21 THAT THE DISCLOSURE MAY CREATE.

22 (F) WITHIN 60 DAYS AFTER ENTRY OF AN ORDER UNDER SUBSECTION  
 23 (D)(3) OF THIS SECTION, EACH CUSTODIAN OF COURT RECORDS THAT ARE  
 24 SUBJECT TO THE ORDER OF ~~EXPUNGEMENT~~ SHIELDING SHALL ADVISE IN  
 25 WRITING THE COURT AND THE RESPONDENT OF COMPLIANCE WITH THE ORDER.

26 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take  
 27 effect October 1, 2010.